

GOLDEN TRIANGLE EXPLORATION CO.

IBLA 83-383

Decided October 17, 1983

Appeal from decision of the Ely District Manager, Nevada Bureau of Land Management, rejecting plan of operation for drilling program on mining claims within wilderness study area NV-0447-3-006P.

Affirmed and remanded.

1. Federal Land Policy and Management Act of 1976: Wilderness -- Mining Claims: Generally

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent the impairment of the wilderness characteristics of those lands. Where the Bureau of Land Management rejects a plan of operations for drilling on mining claims located in a wilderness study area on the basis that the proposed operation would impair the naturalness of the study area, the rejection will be upheld where the mining claimant fails to establish error in the determination.

APPEARANCES: David A. Witts, Esq., for appellant. 1/

OPINION BY ADMINISTRATIVE JUDGE MULLEN

This appeal is taken from a decision dated January 4, 1983, by the Ely District Manager, Nevada Bureau of Land Management (BLM), rejecting a plan of operation for a drilling program within the Weepah Springs Wilderness Study Area (WSA). The plan was filed in accordance with 43 CFR 3802, issued pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976).

On December 6, 1982, Golden Triangle Exploration Company (Golden) submitted a plan of operation for a drilling program on its unpatented mining claims (filed in 1982) within the Weepah Springs WSA. The Golden plan

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proposed the following actions: Rehabilitation of existing drill sites according to BLM specifications; drilling eight holes to an estimated depth of 400 feet, with drill site pads measuring 20 feet by 60 feet; widening of existing road to accommodate drill pad; and drilling of four additional holes, two to 200 feet and two to 400 feet. The plan states that "two acres would be disturbed."

BLM reviewed appellant's plan and carried out an environmental assessment (EA). Based thereon, the District Manager issued a decision stating in pertinent part:

I have considered your mining Plan of Operation submitted to conduct a drilling program within the Weepah Springs Wilderness Study Area. There is no practical way that your proposed operation may be made to conform with the Non Impairment Criteria of the Interim Management Policy and Guidelines for Lands Under Wilderness Review.

The primary obstacle is the low amount of rainfall that can be expected in the proposed area of operation. Due to this amount of precipitation there is only about a 50% chance of re-establishing vegetative growth and getting it back to a point where it may be considered "substantially unnoticeable" by the time the Secretary's recommendation is sent to the President (1987).

Due to the low probability for re-establishment of vegetation, I must consider the project impairing and therefore rejected.

The nonimpairment criteria referred to in the decision derive from section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1976), which directs BLM to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (October 21, 1976) is allowed. 2/

In the statement of reasons appellant assert that the original plan involved an additional area less than 1 acre and the entire area requiring restoration was estimated to be only 4 acres.

BLM's EA describes the plan area and the plan as follows:

The area within the wilderness study area that will be disturbed consists of actually two areas connected by existing roads; the first is a bladed road where five previously drilled holes presently exist. There will be an additional six holes

2/ BLM's EA states that there are no claims filed prior to Oct. 21, 1976, in the area for which the plan of operation is proposed, and thus no grandfathered uses or valid existing rights are involved. See 43 CFR 3802.1-3.

drilled in this area. The other two proposed drill holes are to be drilled on a road that was bladed up a dry wash. These two holes are separated from the site of the previously described six holes by roughly 1 mile. The present existing road is there due to a trespass action. * * *

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* * * [The operator] plans to drill 8 additional holes on his 300 series claims. These holes are to be drilled on an existing road by blading a 20X60' pad for each hole disturbing a total of two acres.

The EA indicates that based on Soil Conservation Service documents a successful seeding in the area could be expected 5 or 6 years out of 10 years because of the low amount of precipitation in the area. The EA evaluates the impacts of appellant's proposed operations as follows:

The soil and vegetation of roughly 4.6 acres will be disturbed by the proposed action; 2.6 acres of this is presently disturbed by the unauthorized use which has already occurred. The other 2 acres are proposed to be disturbed in blading for 8 more drill pads. The grading of drill pads will impact the visual resources of the area but this would not be to an extent to be a detriment to the area's Class 3 VRM rating. Temporary impacts will be an increase in the level of noise and dust. Also, there will be a loss of forage and habitat and increased soil erosion. Direct or indirect mortality could result from increased traffic and loss of habitat.

With no efforts at rehabilitation, revegetation to the point where natural succession is occurring could take from 20 to 30 years.

The impact to the wilderness resource must be considered impairing because, had the impacts after reclamation of the proposed project existed at the time of the intensive inventory, the site would have been disqualified from consideration in the proposed wilderness study area. There is a low probability of successful revegetative rehabilitation by 1987 due primarily to the amount of annual precipitation that can be expected in the area of the disturbance. The successful restoration of the native plant species to a point of natural succession is doubtful prior to the time the Secretary presents his report on the WSA to the President (1987).

With respect to the nonimpairment criteria, the proposed operation is temporary since it can be terminated in time, but the impacts cannot be reclaimed to a substantially unnoticeable condition in the area as a whole.

The wilderness values will have been degraded so far, compared with the area's value for other purposes, as to significantly constrain the Secretary's recommendation with respect to the area's suitability or unsuitability for preservation as wilderness.

It is important to emphasize that the scope of this Environmental Assessment is narrowly restricted to this single operation. Any future operations in this area may also require an Environmental Assessment be written, and the cumulative impacts must be considered. This is necessary because the impacts of several nonimpairing activities may be cumulatively impairing.

There are no significant impacts on threatened and endangered plant or animal species expected by this proposed operation.

A long term impact of this proposed operation which also must be considered is the increased accessibility to the area which will be provided by the bladed road. This site of the proposed operation is included in all of the wilderness alternatives except the no wilderness alternative. Therefore, if this road is not blocked off or restricted in some way, it will affect the Schell Wilderness EIS as presently written.

(EA at 4-5).

The EA also lists mitigating measures for the proposed action. These measures are primarily replanting the disturbed areas with indigenous vegetation. The success of such a reclamation program was in considerable doubt because of scarcity of rainfall.

[1] The issue for decision is whether the BLM decision rejecting the plan of operations on the ground of impairment is reasonable and supported by the record. We hold that it is.

"Impairment of suitability for inclusion in the Wilderness System" is defined in 43 CFR 3802.0-5(d) as follows:

(d) "Impairment of suitability for inclusion in the Wilderness System" means taking actions that cause impacts, that cannot be reclaimed to the point of being substantially unnoticeable in the area as a whole by the time the Secretary is scheduled to make a recommendation to the President on the suitability of a wilderness study area for inclusion in the National Wilderness Preservation System or have degraded wilderness values so far, compared with the area's values for other purposes, as to significantly constrain the Secretary's recommendation with respect to the area's suitability for preservation as wilderness.

We conclude that the EA reasonably sets forth the impacts which could be expected to result from appellant's proposed operation and supports the determination that impairment would result. Havlah Group, 60 IBLA 349,

88 I.D. 1115 (1981). Appellant's statement of reasons falls short of demonstrating error in these determinations. See Keith R. Kummerfeld, 72 IBLA 1 (1983). The record supports the decision of BLM that appellant's plan of operations as submitted to the Nevada Office would impair the suitability of the area for wilderness designation.

In its statement of reasons appellant states that it is amending its mining plan so that no additional drill pads would be required. It states that, by this amendment to the plan, it is precluding vegetative impairment. We note that the EA recognizes the viability of this proposal. As an alternative to the plan as submitted, the EA analyzed the impact of permitting the operator to carry out the proposed operation by restriction of all activities to the area presently disturbed. In the analysis of the environmental impacts the EA noted that by restricting the operations to the already disturbed sites no newly disturbed ground would be created. The EA further stated that the only detrimental impact would be temporary in nature and operation under this alternative would have no lasting effects. This alternative was apparently rejected as being overly restrictive to the needs of the operator.

This Board has the general obligation to defer to BLM's expertise and to give it deference in actions taken pursuant to defined statutory authority where BLM's determinations are supportable. See In re Otter Slide Timber Sale, 75 IBLA 380 (1983); In re Lick Gulch Timber Sale, 72 IBLA 261 (1983); Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981). Therefore this Board will not substitute itself for the authorized officer with respect to the determination that the amended plan of operation does or does not, in fact, meet the statutory and regulatory requirements. The EA indicates that the proposed new plan would meet the objections to the initial plan. However, the actual determination should be made by the authorized officer. Therefore this case is remanded to the Nevada State Office, BLM, for consideration of the amended operating plan as submitted with the appellant's statement of reasons.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and remanded to the Nevada State Office, BLM, for further action in accord with the directives contained herein.

R. W. Mullen
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Will A. Irwin
Administrative Judge.

